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MAY 28 2009

OFFICE OF PETITIONS

In re Application of Challenger et al. :
Application No. 09/845,708 : Decision on Petition
Filing Date: April 30, 2001 :
Attorney Docket No. YOR920010281US1 :

This is a decision on the petition filed March 23, 2009, under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application.

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181."

The Office mailed a final Office action on April 23, 2008. The Office did not receive a reply to the Office action or a request for an extension of time. The Office action set a three (3) month shortened statutory period for reply. As a result, the application became abandoned on July 24, 2008. The Office mailed a Notice of Abandonment on January 23, 2009.

The instant petition was filed March 23, 2009, and alleges non-receipt of the April 23, 2008 Office action.

MPEP 711.03(c)(I)(A) states, with emphasis added,

[A]n allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action....

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action.

In the instant case, petitioner has supplied a copy of part of the master docket. However, the portion of the master docket supplied covers matters docketed for *June* 23, 2009, not July 23, 2009.

A copy of the master docket showing all items due on July 23, 2009, should be supplied.

Unless filed by EFS Web, further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
 Attn: Office of Petitions

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions